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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 Alla Josephine Rosenfield,
10 Plaintiff,

No. CV 11-02327-PHX-NVW

ORDER

11 vs.

12 GlobalTranz Enterprises, Inc., a Delaware
13 corporation; Andrew J. Leto, an Arizona
14 citizen and a married man; Jane Doe Leto,
15 an Arizona citizen and a married woman;
16 Anthony Albanese, a Florida citizen and a
17 married man; Jane Doe Albanese, a Florida
18 citizen and a married woman; John Does I-
X; Jane Does I-X; ABC corporations I-X;
19 Def Limited Liabilities Company I-X; and
20 XYZ Partnerships or LLP, I-X,

21 Defendants.

22 Before the Court is Defendants' Motion to Strike (Doc. 4). Defendants request
23 that the Court strike paragraphs 44, 46, 47 and 48 of Plaintiff's Complaint (Doc. 1-1)
24 because these paragraphs include improperly disclosed attorney-client privileged
25 materials. Defendants also request that the Court authorize the filing of a similar motion
26 in state court, where this case originated, in order to request that the privileged materials
27 be stricken from the complaint on record there. Because Plaintiff restated the privileged
28 materials in her response to Defendants' motion, Defendants also request that the
privileged materials disclosed in Plaintiff's response be stricken.

1 The attorney-client privilege “protects confidential communications between
2 attorneys and clients[] which are made for the purpose of giving legal advice.” *United*
3 *States v. Richey*, 632 F.3d 559, 566 (9th Cir. 2011) (citing *Upjohn Co. v. United States*,
4 449 U.S. 383, 389 (1981)). The privilege applies to “legal advice of any kind . . . from a
5 professional legal adviser in his capacity as such” where “the communications relat[e] to
6 that purpose . . . [and are] made in confidence . . . by the client.” *United States v. Graf*,
7 610 F.3d 1148, 1156 (9th Cir. 2010) (quoting *United States v. Ruehle*, 583 F.3d 600, 607
8 (9th Cir. 2009)). Such privileged materials are “permanently protected . . . from
9 disclosure by [the client] or the legal adviser . . . unless the protection be waived.” *Id.*
10 The party asserting the attorney-client privilege has the burden of establishing all the
11 elements of the privilege. *See Richey*, 632 F.3d at 566. Both the substance of
12 communications between client and attorney regarding the provision of legal assistance
13 as well as the purpose and motivation for seeking legal advice are privileged. *See In re*
14 *Grand Jury Witness*, 695 F.2d 359 (9th Cir. 1982) (“As a general proposition, the client’s
15 ultimate motive for litigation or for retention of an attorney is privileged.”).

16 Defendants have satisfied their burden of establishing that paragraphs 44, 46, 47,
17 and 48 of Plaintiff’s complaint contain attorney-client privileged materials. Plaintiff has
18 not challenged whether the attorney client-relationship exists here or whether the
19 privilege has otherwise been waived. Rather, Plaintiff simply alleges that the disclosed
20 information does not contain “confidential disclosures that rise[] to the level of attorney-
21 client privileged information” (Doc. 8 at 2) and is otherwise by its nature not properly
22 characterized as privileged. However, these paragraphs relate both Defendants’ motive
23 for seeking legal advice as well as the substance of Defendants’ attorney’s
24 communications in response to the inquiry for legal advice, and thus fall plainly within
25 the protection of the attorney-client privilege.¹ This privileged material is therefore
26 inadmissible, and may accordingly be stricken as immaterial under Rule 12(f). *See Fed.*

27 ¹ In order to avoid further disclosure of Defendants’ privileged information, the
28 Court will not discuss specifically the allegations contained in paragraphs 44, 46, 47, and
48.

1 R. Civ. P. 12(f) (authorizing Court to strike from pleading all allegations that are
2 “immaterial, impertinent or scandalous.”).

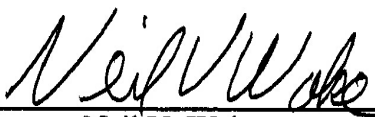
3 Because the Court agrees that paragraphs 44, 46, 47, and 48 contain information
4 protected by the attorney-client privilege, the Court will grant Defendants’ Motion to
5 Strike (Doc. 4) and related requests to strike the privileged material from Plaintiff’s
6 response (Doc. 8) and from the state court record. The parties shall re-file redacted
7 versions of Documents 1 and 8 omitting the privileged materials.

8 IT IS THEREFORE ORDERED that Defendants’ Motion to Strike (Doc. 4) is
9 granted. The Clerk shall strike from the record the documents containing privileged
10 materials (Docs. 1, 8).

11 IT IS FURTHER ORDERED that the parties shall file replacement documents
12 omitting the privileged materials as provided by this order for Documents 1 and 8.

13 IT IS FURTHER ORDERED granting jurisdiction to Maricopa County Superior
14 Court for the limited purpose of striking paragraphs 44, 46, 47, and 48 from the
15 Complaint in this matter that remains on file in the Superior Court’s public record. The
16 Court requests that the Superior Court strike paragraphs 44, 46, 47, and 48 from the
17 Complaint to provide the relief granted by this order.

18 Dated this 27th day of January, 2012.

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22 Neil V. Wake
23 United States District Judge
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